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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,762	11/15/2001	Andrew Baker	53394.000517	7166

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/19/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/987,762

Applicant(s)

BAKER, ANDREW

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-58 and 60-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2, 15-58, 60 and 73-87 is/are allowed.
- 6) ☒ Claim(s) 3-14 and 61-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Allowable Subject Matter*

The indicated allowability of claims 3-14 and 61-72 is withdrawn in view of further consideration of the reference(s) to Litchholt et al. Rejections based on the new interpretation of the reference(s) follow.

Claims 2, 15-58, 60, and 73-87 are allowed.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-14 and 61-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litchholt et al. (5,895,379).

Litchholt discloses all aspects of the claimed invention but remains silent as to the third insult strikethrough and rewet values. Litchholt discloses an absorbent article 10 in the form of a diaper, as shown in figure 1, comprising an impermeable backsheet 14, a permeable topsheet 12, an absorbent core 34, and a foam fluid handling layer 36. The absorbent article 10 is made by a method of providing the backsheet 14, topsheet 12, core 34, and fluid handling layer 36, and assembling the components. The foam fluid handling layer 36 is disposed between the permeable topsheet 12 and the absorbent core 34, as shown in figure 2, and described in column 10, lines 36-37. Litchholt discloses the need for a low rewet value in column 22, lines 18-22, and

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incorporates by reference the topsheet construction of U.S. Patent No. 4,324,246 to Mullane et al. Mullane discloses topsheet materials that reduce rewet and increase strikethrough, and shows in Table IV first insult strikethrough and rewet values that are within the claimed ranges.

It would therefore have been obvious to one of ordinary skill in the art at the time of invention to construct the article of Litchholt such that it has a third insult strikethrough of less than about 45 seconds and a third insult rewet of less than about 35 grams, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With respect to claims 3-5 and 61-63, the foam fluid handling layer 36 comprises a melamine-formaldehyde polymer, as disclosed in column 10, lines 55-60.

With respect to claims 6 and 64, it would have been obvious to one of ordinary skill in the art at the time of invention to make the density of the fluid handling layer within the range of about 20 to about 700 g/l, since it has been held that where the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

With respect to claims 7-9 and 65-67, the foam fluid handling layer 36 further comprises a stabilizing agent in the form of a surfactant, as disclosed in column 9, lines 15-30, which is also fully capable of functioning as a reinforcing agent.

With respect to claims 10 and 68, the article is a diaper, as shown in figure 1.

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With respect to claims 11-14 and 69-72, Mullane discloses strikethrough and rewet values in Table IV.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvert John can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WA  
cla  
April 13, 2004

  
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